

**Criminal Possession Of A Firearm, Rifle Or Shotgun
In A Sensitive Location
Penal Law § 265.01-e
(Committed on or after September 1, 2022)**

The (*specify*) count is Criminal Possession of a Firearm, Rifle or Shotgun in a Sensitive Location.

Under our law, a person is guilty of Criminal Possession of a Firearm, Rifle or Shotgun in a Sensitive Location when such person knowingly¹ possesses a

Select appropriate weapon(s):
firearm, rifle or shotgun

in or upon a sensitive location, and such person knows or reasonably should know such location is a sensitive location.²

The following terms used in that definition have a special meaning:

[A FIREARM means any pistol or revolver.³

¹ The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2) and 15.05 [2]) and with case law. See *People v Persce*, 204 NY 397, 402 (1912) ("the possession [of a slungshot] which is meant is a knowing and voluntary one"); *People v Saunders*, 85 NY2d 339, 341-42 (1995) ("Possession,' as part of the forbidden act, includes the Penal Law definitional component of '[v]oluntary act,' which incorporates the attribute of awareness of the possession or control (Penal Law § 15.00 [2]). Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon"); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

² Subdivision (3) of Penal Law § 265.01-e declares that this offense "shall not apply to:" the persons specified in paragraphs (a) thorough (j). Should the defense at trial raise an issue as to the applicability of the offense to the defendant, the Court should recite in this charge the applicable provision of Penal Law § 265.01-d(3) and then in the listing of the elements add an element that states: and # That the defendant is not (*specify*).

³ Penal Law § 265.00(3). The statutory definition of a "firearm" includes other weapons. If, therefore, a firearm, other than a pistol or revolver, is in issue, see

[RIFLE means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive to fire only a single projectile through a rifled bore for each single pull of the trigger using either: (a) fixed metallic cartridge; or (b) each projectile and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, rifles include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fire a single projectile with each discharge, or loading, including muzzle loading rifles, flintlock rifles, and black powder rifles).⁴]

[SHOTGUN a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger using either: (a) a fixed shotgun shell; or (b) a projectile or number of ball shot and explosive charge are loaded individually for each shot discharged. (Add if in issue: In addition to common, modern usage, shotguns include those using obsolete ammunition not commonly available in commercial trade, or that load through the muzzle and fires ball shot with each discharge, or loading, including muzzle loading shotguns, flintlock shotguns, and black powder shotguns).⁵]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁶

“DEFINITION OF FIREARM AS OTHER THAN A PISTOL OR REVOLVER” in “Additional Charges” at the end of the Table of Contents for Penal Law article 265 crimes.

⁴ Penal Law § 265.00(11).

⁵ Penal Law § 265.00(12).

⁶ Penal Law § 10.00(8). If necessary, an expanded definition of “possession” is available in the section on Instructions of General Applicability under Possession.

A person KNOWINGLY possesses (specify) when that person is aware that he or she is in possession of an object that is (specify).⁷ That person need not know (that is, be aware of) the object's name or that it meets the definition of (specify).⁸

SENSITIVE LOCATION includes [*insert appropriate location from the statutory list in Penal Law § 265.01-e(2)*].

Under this count, (specify) need not be loaded but it must be operable. To be operable, it must be capable of discharging ammunition. The person who possesses the (specify) is not required to know that it is operable.⁹

⁷ See Penal Law § 15.05(2). For an expanded instruction on the definition of “knowingly,” see Instructions of General Applicability, Culpable Mental States, Knowingly.

⁸ See *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that “they possessed a knife” but the People were not required “to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife”); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) (“Contrary to defendant's contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make ‘the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition’ Accordingly, the People did not have to prove that defendant was aware of the statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

⁹ Case law has added “operability” of a firearm as an element of the crime (see *People v Longshore*, 86 NY2d 851, 852 [1995]), but has further held that there is no requirement that the possessor know the firearm was operable (see *People v Parrilla*, 27 N.Y.3d 400 [2016] [“Defendants need only knowingly possess a firearm, they need not know that the firearm was loaded or operable”]; *People v Saunders*, 85 NY2d 339, 341-342 [1995]; *People v Ansare*, 96 AD2d 96, 97 [4th Dept 1983]).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name)¹⁰ knowingly possessed a (specify: firearm, rifle or shotgun) in or upon a sensitive location;
2. That the defendant knew or reasonably should have known that such location was a sensitive location; and
3. That (specify) was operable.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

¹⁰ When the defendant is charged in whole or in part as an accomplice, Court will add: "personally, or by acting in concert with another person." See Accomplice charge.